▪ **Citation:** Mustafa, R. U., Ahmed, G., & Abbas, S. (2022). Legal Landscape of Anti-Corruption in Pakistan: An Appraisal. *Global Legal Studies Review, VII*(1), 89-97. https://doi.org/10.31703/glsr.2022(VII-I).12

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Legal Landscape of Anti-Corruption in Pakistan: An Appraisal

▪ **p- ISSN:** 2708-2458 ▪ **e- ISSN:** 2708-2466 ▪ **Pages:** 89 – 97 ▪ **Vol.** VII, **No.** I (Winter 2022)
▪ **DOI:** 10.31703/glsr.2022(VII-I).12 ▪ **URL:** http://dx.doi.org/10.31703/glsr.2022(VII-I).12

Abstract: *Corruption has been recognized as a global issue which has affected almost all the countries of the world. Corruption is considered the mother of all evils. The whole anti-corruption regime in the country has failed to curb corruption and corrupt activities. After the passage of more than seventy-five years, we as a nation are even in the worst position in terms of the development and well-being of the citizens. The main reason behind this situation is the same menace of corruption which is still pervasive and affecting every citizen of this state. This scenario shows the acute failure as well as structural and fundamental faults in the whole anti-corruption regime in the country in an unequivocal manner. With the help of analytical research methodology, this article discusses a brief history of the anti-corruption regime in Pakistan. It also depicts federal and provincial legislation on the subject of anti-corruption. It also portrays the jurisdiction of Anti-Corruption agencies. It also investigates the failure of FIA and Anti-corruption Establishments and describes the need for a new regime. It also analyzes the impact of parallel anti-corruption forums.*

Key Words: Anti-corruption, Anti-corruption Establishment, Federal Investigation Agency, National Accountability Bureau

Introduction

The anti-corruption initiative in Pakistan started soon after its independence in the year 1947 by adopting the Prevention of Corruption Act, 1947 (POCA). The Act made the offences under sections 161 to 165A PPC cognizable for the purpose of the Code of Criminal Procedure 1898 (POCA, 1947). The law applied only to public servants who are still in force but it only defines criminal misconduct rather than corruption. After the adoption of the POCA, a special ordinance was made under which a special police establishment for the purpose of prevention of corruption was established in 1948 as under POCA, no expert and separate agency was created. Until the promulgation of this Ordinance, the idea of a separate anti-corruption establishment (ACE) or separate wing of the judiciary was not in place (Awan, 2004).

In section three of the said Ordinance, it was provided that the government may constitute a special police establishment for enquiry and investigation of offences notified under section 3. The offences so notified included sections 161-165A PPC (PPC, 1860) and offences under the Prevention of Corruption Act (Notification, 1955). The special police trained in colonial administration utilized as an enforcement agency for achieving the aims and objectives of POCA. The special police remained part and parcel of the existing district police which could be termed as a special branch of police under the same hierarchy. However subsequently, a special police establishment for anti-corruption was created at the centre; and the provincial Anti-Corruption Establishment became a small cell headed by a superintendent of police under the control of the home department, the government of West Pakistan (https://ace.punjab.gov.pk/history, accessed 2021). The Special Police Establishment was later on merged into Federal Investigation Agency in 1975 (The Pakistan Special Police Establishment Ordinance 1948). In January 1949, the Constituent Assembly passed another legislation namely Public Representative Offices Disqualification Act 1949. The law was passed to check graft and misuse of authority by politicians with punishment for disqualification of up

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to 10 years. In 1954, this law was repealed after being denounced as incompatible with democratic politics. In the year 1958, the then martial law government promulgated Public Offices Disqualification Order which was later substituted with the Elective Bodies Disqualification Order 1959 (Awan, 2004).

In 1956, the ACE was reorganised with the creation of one unit and a directorate of ACE West Pakistan under the command and control of the Chief Secretary. Three regional offices were established at Hyderabad, Rawalpindi and Lahore headed by the superintendent of police. The establishment was also mandated with enquiries under the Elective Bodies Disqualification Order 1959 (https://ace.punjab.gov.pk/history, accessed 2022). Subsequently, on 8 September 1961, The West Pakistan Anti-Corruption Ordinance 1961 (WPACO) was promulgated to provide procedural modalities, functions, constitution, duties and powers. Under Sec. 3 of this Ordinance, an ACE of West Pakistan was established (Khan, 2016).

Under this Ordinance, a director (The post of director was substituted by Director General by the Punjab Anti-Corruption Establishment (Amendment Act 2005) was designated to head the Establishment in each province with a sufficient number of officers (WPACO, 1961) while the prosecution of cases was to be governed under Criminal Law Amendment Act 1958 (CLAA, 1958). Rules were also framed in the year 1965 to further regulate the working of the Establishment. The said rules were further superseded by Punjab ACE Rules 1974. District, Divisional and Provincial Committees were established under the said rules to accord sanction for the initiation of enquiries. The said rules were further superseded by Punjab Anti-Corruption Establishment Rules 1985 (PACER) and 2014 respectively.

At the federal level, Federal Investigation Agency (FIA) was created under FIA Act 1974. The FIA was created on the footprints of the Federal Bureau of Investigation (FBI) in the USA. The FIA is having special anti-corruption wing to deal with certain offences of corruption in connection with matters concerning the Federal Government. The agency is working under the command and control of the Ministry of Interior which continued as the sole and major federal anti-corruption agency till 1996 (Awan, 2004).

In the year 1996, the then-caretaker government created another anti-corruption agency namely Ehtesab Cell. Until this time, the anti-corruption legislation in Pakistan was primarily focused on public servants but in 1997 the Ehtesab Act (1997) was promulgated under an Ehtesab Commission was established. The Commission was supplemented by an Ehtesab Bureau which assumed the functions of investigation while the Commission was mandated with the prosecution of cases. This law brought the highest public office holders into the ambit of anti-corruption law including the President and Prime Minister (the Ehtesab Act 1997). The law also provided for special benches headed by high court judges to adjudicate anti-corruption cases.

After the military coup in 1999, the latest anti-corruption law was passed namely National Accountability Ordinance 1999 which repealed the Ehtesab Act 1997. Under the said Ordinance, National Accountability Bureau was established. The new law broadened the definition of corruption to include assets beyond known sources of income. The law was also made applicable to the private sector while the traditional doctrine of the burden of proof was also changed. The duration of remand was also extended up to 90 days (the National Accountability Ordinance 1999).

Under this law, a three-pronged strategy was aimed at the elimination of corruption while taking guidance from anti-corruption initiatives in Hong Kong and Singapore. The elimination of corruption was aimed to be done through awareness, prevention and enforcement simultaneously. National Accountability Ordinance empowered the Bureau to not only investigate but also to prosecute corruption cases. For this purpose, special courts i.e. Accountability Courts have been established for the speedy disposal of corruption-related cases. The Bureau is also required to submit an annual report regarding its affairs to the President of Pakistan each year which report is a public document (The National Accountability Ordinance 1999).

Federal and Provincial Legislation

In Pakistan two layers of anti-corruption were established; one at the federal level and the other on a provincial level. Three statutes were made and three sets of courts were established. At the provincial level, four ACEs were established and at the federal level, FIA and NAB were also instituted. Three statutes; PPC of 1860, POCA of 1947 and NAO 0f 1999 respectively were made to prevent corruption. Accountability courts were launched under NAO and provincial and central special courts were also created under the CLAA of 1958 (S.3, CLAA, 1958).

As discussed earlier, a Special Police Establishment was established for the investigation of

offences under sections 161-165A PPC and POCA 1947 concerning the central government. This Special Police Establishment investigated the said scheduled offences pertaining to the federal departments till 1974 when Federal Investigation Agency was established and the special police force was merged into it. The FIA Act provided for the constitution of a specialized agency for the investigation of certain offences which includes offences under section 161-165A PPC and offences under POCA, 1947 when the said offences are committed in relation to the matters concerning the central government (Javed, 2010).

The superintendence of the agency is vested with the federal government through the Ministry of Interior. The Federal Investigation Agency is headed by a Director General (DG) who is appointed by the federal government. The headquarter of the agency is located in Islamabad while there are five regional offices/zones including Lahore, Karachi, Peshawar, Quetta and Islamabad. Each of the said zones is headed by a director (FIA, Act 1974).

The FIA is not a specialized and fully dedicated agency to investigate the crimes of corruption rather anti-corruption investigations are only a part of its broader mandate while the prime focus of the agency is an investigation of human trafficking, smuggling, terrorism and cyber crimes cases. The agency has jurisdiction in multiple areas while anti-corruption cases are dealt with by a small wing namely the anti-corruption wing (ACW). This wing is headed by an Additional DG at the headquarters who assists the DG and coordinates the operations of zonal directors regarding anti-corruption cases. The mandate of the agency regarding anti-corruption and economic crimes was transferred to National Accountability Bureau in 2004 (S.R.O. 702(I)/2004, 16-8-2004) however it was restored in 2008 (ACW, http://www.fia.gov.pk/en/acw.php, accessed 2022).

The NAB is the apex anti-corruption agency in Pakistan dealing specifically with the investigation and prosecution of crimes of corruption. The National Accountability Bureau was established under the NAB Ordinance 1999. The Chairman of NAB heads the agency and his appointment is made by the President with the consultation of the leader of the opposition and the House Leader. Once his appointment is made by the President, the removal authority is Supreme Judicial Council and the procedure of removal will be the same as the procedure for removal of a judge of the Supreme Court of Pakistan (S.6, National Accountability Ordinance, 1999).

The agency is working for the elimination of corruption with a three-pronged strategy i.e. awareness, prevention and enforcement. The headquarter of the agency is located in Islamabad while there are seven regional offices (http://nab.gov.pk/home/introduction.asp, accessed 2021) of the agency including Rawalpindi, Lahore, Multan, Karachi, Sukkur, Quetta and Peshawar besides having a sub-office of Rawalpindi regional office at Gilgit. Each of the regional offices is headed by a Director General having a team of investigators and prosecutors at each region (Javed, 2010).

At the provincial level, there are Anti-Corruption Establishments working in each province. In Punjab, the Anti-Corruption Establishment has been established under the Punjab Anti-Corruption Establishment Ordinance 1961 (PACEO). The Establishment is headed by a DG who is to be appointed by the provincial government (S.3, The Punjab Anti-Corruption Establishment Act 1961). The Director General is under the command and control of the Chief Minister through Chief Secretary and Additional Chief Secretary (https://ace.punjab.gov.pk/organogram_aced). The Establishment has a headquarter headed by the Director General and nine regional offices each headed by a director. Each regional office consists of a different number of district offices covering the whole province. The regional offices are located in Lahore, Gujranwala, Multan, Faisalabad, Bahawalpur, Dera Ghazi Khan, Rawalpindi, Sahiwal and Sargodha. The detailed procedure for initiation of inquiries, registration of cases and arrests is provided under the Punjab Anti-Corruption Establishment Rules (2014) which are framed u/s 6 of the PACEO 1961.

In KPK, ACE was established in the form of a directorate under the government of KPK in the year 1971. The Establishment is governed by WPACEO, 1961 and the KPK Anti-Corruption Rules 1999 were made u/s 6 of this Ordinance of 1961 (Notification No. SOS-III (S&GAD) 4(6)/98, dated 15-12-1999). The Directorate is headed by a Director in BPS-18 (S.4, WPACEO, 1961) which is to be appointed by the government of KPK. The Director holds overall superintendence and general control of the establishment. (S. 4(2), WPACEO, 1961).

In the province of Sindh, an ACE is working under the department of Services General Administration &Coordination, Government of Sindh. The Sindh Anti-Corruption Establishment is created and governed under Sindh Enquiries and Anti-Corruption Act 1991) and Sindh Enquiries and Anti-Corruption Rules (1993) made under section 9 of the Act. Under this Act, the Establishment consists of a Chairman and such number of directors, officers or members as may

be determined by the provincial government. The Chairman who is under the command and control of the provincial government holds general control and overall superintendence of the establishment (The Sindh Enquiries and Anti-Corruption Act 1991 (SD) s 3). This Act repealed the Sindh Anti-Corruption Ordinance 1961 as well as the Sindh Enquiries and Anti-Corruption Ordinance 1991.

Similarly, in the province of Baluchistan, the Enquiries and Anti-Corruption Establishment is established and governed by the Baluchistan Enquiries and Anti-Corruption Act 2010 and Baluchistan Enquiries and Anti-Corruption Rules 2011 made under section 8 of the Act. The Establishment is headed by a Director General and such a number of directors, deputy directors, officers and members as may be determined by the government. This Establishment is also under the command and control of the provincial government and is under the Services &General Administration Department (The Balouchistan Enquiries and Anti-Corruption Act 2010 (BA) s 3.)

Jurisdiction of Anti-Corruption Agencies

The jurisdiction of Anti-Corruption Establishments in the provinces as well as the Federal Investigation Agency at the federal level is basically restricted to and revolves around public servants. These agencies can only investigate the scheduled offences which include section 161-165A Cr.PC and the offences under POCA, 1947. Unlike the said agencies, the NAO 1999 does not restrict the National Accountability Bureau to just public servants as it is applicable to all citizens of Pakistan (The National Accountability Ordinance 1999 (PAK) s 4) while the word "holder of a public office or any other person" is used in section-9 of the Ordinance 1999 which defines the offence of corruption and corrupt practices.

There is another impediment in the exercise of jurisdiction by the Provincial ACEs as well as the FIA and that is the prior approvals of competent authorities for initiation of inquiries, registration of criminal cases and arrest of public servants depending on their respective grades. Even the jurisdiction of the special judge anti-corruption at the provincial level and special judge central at the federal level for the prosecution of public servants is barred unless sanction is granted in this regard by the appropriate government (The Criminal Law Amendment Act 1958 (PAK) s 6(5)). The said restriction is not only imposed by the CLAA, 1958 but also by the Cr. P.C, 1898 (Cr. P.C, 1898 (PAK) s 197).

In Punjab, the Anti-Corruption Establishment requires prior permission from the Chief Minister for initiation of enquiry against DCO, Commissioner, Secretary to the government or an officer in BPS-20 or above and such enquiry can only be initiated by Director General while prior permission of Chief Secretary is required for initiation of enquiry against an officer in BPS-19 (The Punjab Anti-Corruption Establishment Rules 2014 (PB) Rule 5(3)). In case the arrest of a public servant is required by the Establishment then prior permission in writing from the Additional Chief Secretary is required for the arrest of an officer in BPS-18 and BPS-19 while the permission of the Chief Secretary is required in case the arrest of DCO, Commissioner, Secretaries to the government or an officer in BPS-20 and above is desired by the Establishment.

Under the Punjab Anti-Corruption Establishment Rules 2014, a provincial anti-corruption committee is established which is headed by either the Chief Minister or a Provincial Minister so nominated by the Chief Minister while the Chief Secretary is also a member of this committee. The Chief Minister or the Chief Secretary can on their own motion, inquire into the matter or call records or pass any other appropriate order as they deem fit.

In KPK, the situation is not much different as the Anti-Corruption Establishment here also requires prior permission of the Chief Secretary for initiation of enquiry against a DCO, government secretaries or department heads or an officer in BPS-19 and above and such enquiry can only be initiated by the Director being head of the Establishment (The KPK Anti-Corruption Establishment Rules 1999 (KP) Rule 3). Similarly, a criminal case can only be registered with written orders of the Chief Secretary against an officer in BPS-19 and above while the permission of the Chief Secretary is required in case the arrest of an officer in grade 17 or above is desired by the Establishment. Under the KPK ACE Rules 1999, the Chief Secretary can suo moto call for the record of any case or enquiry and may pass such orders as he deems appropriate.

In the province of Sindh, three types of committees are formed under Sindh Enquiries and Anti-Corruption Rules 1993 to deal with the cases of public servants. These committees are (i) Provincial Anti-Corruption Committee-I (ACC), (ii) Divisional ACC-II and (iii) District ACC-III (The Sindh Enquiries and Anti-Corruption Rules 1993 (SD) Rule 3). ACC-I is headed by Chief Secretary and the mandate of this committee is to deal with corruption cases of public servants in BPS-17 and above and to make recommendations to the competent authority for permitting to initiate an inquiry or criminal case or to drop the case. Likewise, the ACC-II deals with cases of

public servants in BPS-9 to BPS 16 while ACC-III deals with cases of BPS 1 to BPS 8 respectively.

Under rule 8, no enquiry can be initiated against a public servant without the prior approval of competent authority and under rule 11, no criminal case can be registered against a public servant without prior approval of the competent authority. Under schedule-1, Chief Secretary is the competent authority to authorize enquiry or registration of a criminal case against a public servant in BPS-19 and BPS-20 while this authority vests in the Chief Minister in case of an officer in grade 21 and above. In the case of a judicial officer, the competent authority is the chief justice of the Sindh High Court. Under rule 21, the Chief Minister may pass any order regarding any enquiry, investigation or prosecution of any public servant and his order shall have precedence over any order passed by any other authority in respect thereof.

In the province of Baluchistan Provincial, Divisional and District Committees are also formed under Baluchistan Enquiries and Anti-Corruption Rules 2011 on a similar pattern as that of Sindh. The Provincial Anti-Corruption Committee is headed by Chief Secretary (The Baluchistan Enquiries and Anti-Corruption Rules 2011 (BA) Rule 3). Under rule 8, no enquiry can be initiated against a public servant without prior approval of competent authority and under rule 11, no criminal case can be registered against any public servant without prior approval of said competent authority while under rule 13 no public servant can be arrested without prior approval of competent authority as mentioned in schedule-1 of the Rules.

Under schedule-1, the competent authority for conducting an inquiry or for registration of a criminal case or to arrest a public servant in BPS-19 and BPS-20 vests with the Chief Secretary while in case of the public servant in BPS-20 and above such authority vests in Chief Minister. In the case of a judicial officer, the competent authority is the Chief Justice Baluchistan High Court. The Chief Minister may pass any order regarding any enquiry, investigation or prosecution of any public servant (The Baluchistan Enquiries and Anti-Corruption Rules 2011 (BA) Rule 21) and his order shall have precedence over any order passed by any other authority in respect thereof.

At the federal level, the FIA (Inquiries and Investigation) Rules 2002 provides for the procedure for the initiation of inquiries as well as arrests of public servants under the federal government. Under the rules, no inquiry can be initiated against a public servant in BPS-20 and BPS-21 without prior approval of the Secretary of Interior and in the case of a public servant in BPS-22 or equivalent, permission is required from FACC (Federal Investigation Agency (Inquiries and Investigations Rules 2002 (PAK) Rule 5). Similarly, no criminal case can be registered against a public servant in BPS-20 and BPS-21 without the approval of the Secretary of Interior and in the case of a public servant in BPS-22 or equivalent, by FACC (Federal Investigation Agency (Inquiries and Investigations) Rules 2002 (PAK) Rule 5(2)). Under rule 8, the Secretary in the case of the public servant in BPS-18 and BPS-19 and FACC in the case of a public servant in BPS-20 to BPS-22 can drop a case against the said public servants and recommend departmental inquiries. Similarly, under rule 10, a sanction is required from the federal government for the prosecution of a public servant.

Unlike the provincial Anti-Corruption Establishments and FIA, the jurisdiction of the National Accountability Bureau is not restricted to the public servants of the federal government as is the case with FIA or to public servants of the provinces as is the case of provincial Anti-Corruption Establishments. Moreover, the ambit of the Bureau is not restricted to just public servants but also to other individuals who come within the ambit of section 9 of the Ordinance (The National Accountability Ordinance defines the offence of corruption and corrupt practices in Section 9 of the Ordinance). Similarly for initiation of enquiry, investigation or trial under NAO against a public servant, no permission from any authority of provincial or federal government is required as the enquiries, investigations, as well as prosecution of cases is either authorized by the Chairman NAB or by the respective Director Generals of the regions under the delegated powers from the Chairman NAB.

On the other hand, no officer of the federal or provincial government or the head of provincial or federal government can call for any record of the cases under enquiry, investigation or prosecution and no order can be passed by any such authority or office as is the case of FIA and all the provincial Anti-Corruption Establishments. In the like manner, no such authority in the federal or provincial government can play any role to drop any enquiry or investigation or reference against any individual as such matters are dealt with by RBM (Regional Board Meeting headed by the Director General of a region) at the regional level and EBM (Executive Board Meeting headed by Chairman NAB) at the headquarter level while the NAO does not provide for referring any matter to concerned department by dropping any inquiry, investigation or reference against any individual. NAO also give the authority to the Chairman NAB to get transferred any

case from any other court or tribunal involving any offence under NAO (The National Accountability Ordinance 1999 (PAK) s 16A).

4. Failure of FIA and ACEs and the need for the new regime

The federal as well as the provincial anti-corruption regime prior to the promulgation of the National Accountability Ordinance 1999 i.e. FIA and provincial ACEs lacked any productivity due to the inherent flaws and weaknesses within the legislations regulating the said agencies. This situation paved the way for the promulgation of a new law in the form of the Ehtesab Act 1997 which was ultimately transformed into NAO 1999.

One of the most fundamental flaws in the said previous regime was the fact that under the said regime corruption was not considered a special crime therefore it was and is still dealt with without any special procedure by Anti-Corruption Establishments as well as FIA as the proceedings in these agencies are regulated under the ordinary provisions of the Code of Criminal Procedure 1890, unlike NAO which has provided for a special procedure for this special crime whether it be the duration of remand, the burden of proof, the quantum of punishment, options like Voluntary Return/Plea Bargain or disqualification provisions.

The offence of corruption was not even recognized as a distinct offence in any legislation prior to the promulgation of the NAO, 1999 and the crimes of corruption were only dealt with under the heads of illegal gratification as defined under the PPC 1860 (The PPC 1860 (PAK) ss 161-165) or as criminal misconduct as defined under the POCA, 1947 (The POCA, 1947 (PAK) s 5). The NAO, 1999 not only made the crime of corruption and corrupt practices a distinct offence but also gave broadened elaboration of corruption and corrupt practices (The National Accountability Ordinance 1999 (PAK) s 9(a)). Similarly, prior to the promulgation of the National Accountability Ordinance 1999, the jurisdiction of anti-corruption agencies was almost restricted to the extent of public servants while the jurisdiction of the National Accountability Bureau was extended beyond the public servants and private individuals involved in the crime of corruption and corrupt practices also came on the radar of the Bureau.

Likewise, before the National Accountability Bureau, there was no specialized and unified anti-corruption agency to deal with corruption-related offences as the Anti-Corruption Establishments in each province were firstly restricted to the territorial area of that particular province. Secondly, their jurisdiction was restricted to public servants of that particular province while the jurisdiction of FIA was restricted to the extent of public servants employed in federal departments although its jurisdiction was extended to the whole of Pakistan. However, the territorial jurisdiction of the National Accountability Bureau was extended to the whole of Pakistan with its applicability to all persons whether they are public servants or not.

One distinctive feature of the National Accountability Bureau among others is the fact that as compared to the Anti-Corruption Establishments or FIA, it proved to be more independent in its working as, under the Ordinance, no permission from any head of department or head of government was required to initiate any inquiry, investigation, filing of reference or prosecution of any provincial or federal public servant. The other agencies, on the other hand, are not considered independent in their work as these require specific permission from designated sanctioning authorities i.e. Chief Secretary, Chief Minister, Secretary Interior or FACC for inquiries, registration of criminal cases or prosecution of public servants. However, these agencies were found toothless when it comes to the involvement of the said sanctioning authorities themselves in corruption.

In the same manner, the anti-corruption regime prior to NAO only focused on prosecution while the NAB is mandated with a multi-dimensional strategy to control corruption including an awareness drive and preventive measures for killing the devil in the bud (See the preamble of the National Accountability Ordinance 1999). Similarly, prior to NAO, the anti-corruption law did not provide for any democratic check or public accountability as previously the corruption of public servants was supposed to be checked by the public servants themselves without being answerable to the public at large while under NAO the agency is under statutory obligation to publish an annual report regarding its performance each year (The National Accountability Ordinance 1999 (PAK) s 33D).

Impact of Parallel Anti-Corruption Forums

Although the new law i.e. the National Accountability Ordinance 1999 was promulgated to overcome the flaws in the previous anti-corruption regime. However, the previous regime was not abolished and is still kept alive resulting in serious repercussions. The coexistence of these anti-corruption laws with all the said inconsistent provisions has an adverse impact on the whole anti-corruption drive in the country.

There are at least three parallel agencies to check the corruption of public servants or corruption related to public servants, operating under different laws. Anti-corruption agencies like FIA and Anti-Corruption Establishments take cognizance of offences either under sections 161-165A PPC or under the Prevention of Corruption Act 1947. The maximum punishment which can be awarded to an accused under Pakistan Penal Code (1860) for corruption is three years imprisonment or fine or both whiles in the case of an offence under the Prevention of Corruption Act, a maximum of seven years of imprisonment can be awarded to an accused.

On the other hand, if the same person is tried for the same offence under National Accountability Ordinance 1999 then the maximum punishment with which he can be sentenced is 14 years imprisonment and that is also rigorous in nature (The National Accountability Ordinance 1999 (PAK) s 10) while under Criminal Law Amendment Act 1958, the imprisonment for offences under PPC and POCA can be of either description (Criminal Law Amendment Act 1958 (PAK) s 11(2)). Similarly, the punishment of fine under NAO is mandatory which cannot be in substitution of imprisonment but in addition to imprisonment, unlike PPC and POCA. Moreover, the fine so imposed under NAO shall not be less than the gain derived by an accused (The National Accountability Ordinance 1999 (PAK) s 11) and that also in addition to forfeiture of any assets or pecuniary resources of the accrued which are found disproportionate to the known sources of his income or which are in the name of his dependants or benamidar (A Benamidar is an ostensible owner of a property).

Even there is a difference in punishment if the same public servant is tried under PPC or POCA 1947. The punishment under PPC is less severe which in no case can exceed three years. Similarly, unlike PPC, POCA provides for the forfeiture of any property of an accused public servant found to be disproportionate to the known sources of his income along with imprisonment of up to seven years and a fine (POCA, 1947 (PAK) s 5C).

Similarly, there is a difference in the duration of physical remand if an accused is arrested by FIA and Anti-Corruption Establishments as compared to NAB. In the case of FIA and Anti-Corruption Establishments, the remand of an accused is regulated by the Cr. P.C, 1898 (CLAA, 1958 (PAK) s 6(1)) which means a maximum of 14 days remand (The Cr. P.C, 1898 (PAK) s167). In case the same accused is arrested by NAB, the duration of remand may extend to 90 days (The NAO, 1999 (PAK) s 24(d)). Similarly, an accused who is arrested under NAO 1999, is having the option of Voluntary Return at the inquiry stage (The NAO, 1999 (PAK) s 25(a)) and the option of Plea Bargain at the stage of the investigation as well as during the trial of the accused or even during the pendency of an appeal (The National Accountability Ordinance 1999 (PAK) s 25(b)). On the other hand, neither the option of Voluntary Return nor the option of Plea Bargain is available to an accused arrested for similar offences by the Provincial ACE or by the FIA.

In the like manner, under the NAO 1999, the burden to proof regarding offences under sections 9(vi) and 9(vii) lies on the accused (The National Accountability Ordinance 1999 (PAK) s 14(d)) but in no offence triable by the Provincial Anti-Corruption Establishments or the FIA, the burden to proof is placed on an accused. In this way, the National Accountability Ordinance made an exception to the general principles of criminal jurisprudence regarding the placement of the burden of proof on an accused who is considered the favourite child of law and who is presumed to be innocent until proven guilty (Zafar, 2014).

One of the major questions which arise out of said parallel jurisdictions of different agencies regarding the same subject and same offence is the impartiality and non-interference by the government especially in the case of public servants as the Anti-Corruption Establishments are under the direct command and control of the provincial governments which are under the direct influence of the said governments. Similarly, in the case of the Federal Investigation Agency, the organization is under the direct command and control of the ruling party/government as the agency is not an independent organization and is an attached department of the Ministry of Interior. However, the National Accountability Bureau can be said to be independent to some extent as it is not under the direct command and control of the government but it depends on the government for its finances. The adverse outcome can be observed from different decisions of the courts wherein benefits of doubt are normally extended to the accused even accused of NAB even convicts of NAB. Multiple legislations on anti-corruption also cause adverse effects (Saleem Raza Vs. The State, 2007 PLD 139).

This situation can be used to favour an accused investigated by the Anti-Corruption Establishments or FIA in the form of lesser punishment or with a fine or his case can be managed to be dropped by the relevant agency. Even in case of meagre punishment, the accused can avoid harsher punishment under NAO

1999 whether it be in the form of punishment through confinement or the form fine or in the form of other repercussions like disqualification to hold public office or contesting elections or availing public finance (The NAO, 1999 (PAK) s 15(a)(b)). Similarly if any of such accused managed lesser punishment as mentioned above then he cannot be investigated or tried again for the same offence by NAB being hit by the doctrine of double jeopardy while he can enjoy the benefit of illegal gains against lesser punishment for the rest of his life.

One other major adverse outcome of this parallel jurisdiction is the hurdle in the collection of incriminating evidence from other countries against the accused by these agencies excluding NAB. This is because of the fact that there is no special mechanism available for these agencies in Pakistan to seek Mutual Legal Assistance from other countries because for the purposes of Mutual Legal Assistance under the UN Convention against Corruption 2003, NAB is the only designated agency to send or receive Mutual Legal Assistance requests. If the other agencies need international assistance then these agencies have to go through a long channel i.e. through the Ministry of Interior to the Ministry of Foreign Affairs.

Even if the said cumbersome procedure is adopted even then there is no guarantee of receiving the desired information or evidence as such sort of assistance at the international level is sought on the basis of reciprocity whereas the other states raise the objection that if they need any assistance from said agencies then these agencies do not have any obligation to provide such information being non-designated agencies for MLA under the domestic law so no reciprocity is recognized to the extent of these agencies (Zafar, 2014).

These jurisdictional overlaps and statutory inconsistent provisions are giving undue benefit to some individuals on one hand while on the other hand, they are against the fundamental protections to an accused including due process of law, fair trial and equality before the law as envisaged by the Constitution of Pakistan. This is because of the differential treatment of similar criminals for the same offence due to the difference in anti-corruption forums. One particular example is that although the NAO provides for the transfer of the trial of the accused from other agencies to NAB however even in that case the accused is barred to avail the benefit of Voluntary Return and avoiding conviction and disqualifications unlike the other accused are enquired and investigated by NAB.

Conclusion

There are a number of weaknesses within the overall anti-corruption legal and institutional framework including unsustainable overlaps and inconsistencies. Many laws are confusing, contradictory; overlapping and serve no useful purpose whatsoever. On the other hand, there are a number of laws, subordinate legislations and policies etc., promulgated or adopted by successive governments which are neutralizing the effects of anti-corruption legislation. The failure of the anti-corruption legal regime in the country is also attributable to a lack of timely and proper legislative measures to address certain important areas related to the anti-corruption regime. The National Accountability Ordinance 1999 which is the apex anti-corruption law has a number of defects which has caused the failure of the National Accountability Bureau to deliver up to the mark such as the provision of Voluntary Return and Plea Bargain option which is facilitating corruption. The jurisprudence developed by the Supreme Court regarding the investigation of mega corruption scandals especially the Panama Leaks Case and Fake Accounts Case has also been much controversial. The Supreme Court assumed jurisdiction in these cases without having any constitutional or statutory mandateas the Apex court bypassed other institutional forums. The unwarranted intervention of the apex court in corruption matters has led to over-accountability.

The combined effect of all these shortcomings is the creation of a legal environment in the realm of anti-corruption which is hampering the anti-corruption initiative in the country. This legal environment has in fact disabled the whole anti-corruption legal regime in the country from effectively eradicating the crime of corruption. The only viable solution to this problem is the restructuring of the whole anti-corruption legal regime in the country.

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